

**RESOLUTION NO. RC2017-9**

**RESOLUTION OF THE CITY OF WEST LAFAYETTE, INDIANA,  
REDEVELOPMENT COMMISSION AUTHORIZING THE ACQUISITION OF  
CERTAIN REAL PROPERTY LOCATED IN THE LEVEE/VILLAGE ECONOMIC  
DEVELOPMENT AREA AND THE LEASING THEREOF**

WHEREAS, the City of West Lafayette Redevelopment Commission (the "Commission"), governing body of the City of West Lafayette Department of Development (the "Department") and the Redevelopment District of the City of West Lafayette, Indiana (the "Redevelopment District"), exists and operates under the provisions of I.C. 36-7-14, as amended from time to time; and

WHEREAS, the Commission proposes to acquire certain real property (the "Parking Spaces") owned by West Lafayette Apartment Homes, LLC ("WLAH") located in the Levee/Village Economic Development Area ("Area") described as Lots 2F through 12 F in the Amended Final Plat of Wabash Landing, Phase One, Part One, as recorded in Plat Cabinet 7, Slide 93, as Instrument No. 01046032 in the Office of the Recorder of Tippecanoe County, Wabash Township, Tippecanoe County, Indiana pursuant to the provisions of IC 36-7-14-19, as amended; and

WHEREAS, the Common Council of the City of West Lafayette approved the purchase of the Parking Spaces at its meeting on June 5, 2017 as Resolution No. 08-17; and

WHEREAS, the Commission and Curtis-Renfro Parking Management Company, LLC ("Curtis-Renfro") desire to terminate the Restated Parking Management Agreement (Public Component) ("Management Agreement") dated December 17, 2007; and

WHEREAS, the Commission proposes to lease the purchased Parking Spaces together with an additional 114 parking spaces to WLAH under a Parking Lease Agreement; and

WHEREAS, the Commission proposes to lease 104 parking spaces to Wabash Landing Hotel Associates, LLC ("Hotel"); and

WHEREAS, the Commission has caused two separate appraisals (the "Appraisals") to be made of the purchase value of the Parking Spaces by two independent appraisers, namely, Dale Webster d/b/a Cornerstone Appraisal and Benjamin S. Cottingham of McClain Cottingham & Gilligan, LLC (collectively, the "Appraisers"); and

WHEREAS, in undertaking the Appraisals, the Appraisers took into consideration the size, location and physical condition of the Parking Spaces, the advantages accruing to the Parking Spaces under the Economic Development Plan relating to the Area, and all other factors having a bearing on the value of the Parking Spaces; and

WHEREAS, the Commission desires to undertake management of the Wabash Landing Parking Garage ("Parking Garage").

NOW THEREFORE, BE IT RESOLVED by the City of West Lafayette Redevelopment Commission as follows:

1. The Commission hereby finds and determines that the acquisition of the Parking Spaces will further the economic development purposes of the Area.

2. The Commission hereby finds and determines that the purchase price for the Parking Spaces shall be \$831,000.00, which is the average of the two Appraisals.

3. Said purchase price shall be paid over a period of ten (10) years at the cost of \$83,100.00 per year from Levee/Village Tax Increment funds.

4. The President of the Commission is hereby authorized and directed to enter into a purchase agreement, substantially in the form of Exhibit A hereto, with Wabash Landing Apartment Homes, LLC to effectuate the sale of the Parking Spaces, with such changes therein as the President, with the advice of the Commission's counsel, may find necessary or appropriate and in furtherance of the economic development purposes of the Area, which findings will be conclusively evidenced by the President's execution of the purchase agreement. The Secretary of the Commission is authorized and directed to attest the President's execution of the purchase agreement.

5. The President of the Commission is hereby authorized and directed to enter into a Parking Lease, substantially in the form of Exhibit B hereto, with WLAH to effectuate the leasing of the Parking Spaces together with an additional 114 parking spaces, with such changes therein as the President, with the advice of the Commission's counsel, may find necessary or appropriate and in furtherance of the economic development purposes of the Area, which findings will be conclusively evidenced by the President's execution of the parking lease. The Secretary of the Commission is authorized and directed to attest the President's execution of the parking lease.

6. The President of the Commission is hereby authorized and directed to enter into a Parking Lease, substantially in the form of Exhibit C hereto, with Hotel to effectuate the leasing of 104 parking spaces, with such changes therein as the President, with the advice of the Commission's counsel, may find necessary or appropriate and in furtherance of the economic development purposes of the Area, which findings will be conclusively evidenced by the President's execution of the parking lease. The Secretary of the Commission is authorized and directed to attest the President's execution of the parking lease.

7. The Commission hereby terminates the Management Agreement as of August 1, 2017 and shall begin management of the Parking Garage as of August 1, 2017.

8. The President is authorized and directed to take all such actions and to execute and deliver and make all necessary or desirable further agreements, leases, certificates, documents, filings, papers and recordings as are necessary or desirable to carry out the purposes of this Resolution, in such forms as the President may deem proper, which propriety will be conclusively evidenced by their execution.

9. The foregoing recitals and all exhibits are incorporated into this Resolution by this reference. If any section, paragraph or provision of this Resolution is held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision will not affect any of the remaining provisions of this Resolution.

10. This Resolution shall be in full force and effect from and after its adoption by the Commission.

ADOPTED AND APPROVED at a meeting of the City of West Lafayette Redevelopment Commission held on July 19, 2017.

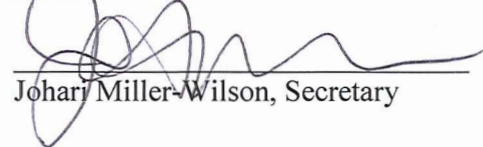
CITY OF WEST LAFAYETTE, INDIANA  
REDEVELOPMENT COMMISSION



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Lawrence T. Oates, President

ATTEST:



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Johari Miller-Wilson, Secretary

## **EXHIBIT A**

### **PURCHASE AGREEMENT**

The Redevelopment Commission of West Lafayette ("Commission") offers to purchase from Wabash Landing Apartment Homes, LLC ("WLAH"), the following described real estate ("Real Estate") described as follows:

See attached Exhibit A

#### **I**

### **RESIDENTIAL REAL ESTATE SALE**

1. **Purchase Price.** The Purchase price for the Real Estate shall be Eight Hundred Thirty One Thousand Dollars (\$831,000.00) ("Purchase Price").

2. **Payment.** Said Purchase Price shall be paid as follows:

The sum of Eight Three Thousand One Hundred Dollars (\$83,100.00) per year for ten (10) years from tax increment property taxes levied in the Levee/Village Tax Increment Financing District.

#### **II**

### **GENERAL TERMS AND CONDITIONS**

The following terms and conditions shall be applicable to the Real Estate sale:

1. **Conditions of Offer.** Unless waived in writing by Commission, Commission's obligations hereunder are subject to the satisfaction of the following conditions:

2. **Evidence of Title.** Within five (5) days from acceptance of this offer, WLAH, at WLAH's expense, shall provide Commission with a commitment for title insurance, issued by a title insurance company authorized to do business in Indiana, committing the company to issue a standard ALTA owner's policy, insuring marketable title to the Real Estate in the name of the Commission for the amount of the Purchase Price, subject only to such exceptions as are permitted by this Agreement. Title shall not be considered unmarketable by reason of, and Commission shall accept title subject to: (a) a mortgage or other lien which, if not satisfied prior to closing, shall be paid and satisfied at closing; (b) recorded or visible easements for public roads, utilities, drainage, CATV or other public purposes upon which existing improvements on the Real Estate do not encroach; provided, however, at the time of closing: (1) there is no existing violation of the restrictions by the existing improvements or the present use thereof; and (2) there is no provision for reversion, re-entry, of forfeiture of title by reason of the restrictions. The title company shall

also provide Commission with copies of all instruments, if any, referred to in the commitment as exceptions to title. Commission shall have five (5) days after receipt of the commitment to have the evidence examined and to notify WLAH of any title effects not permitted by this Agreement. Upon expiration of said five (5) day period, Commission shall be deemed to have accepted such title evidence. WLAH shall use reasonable efforts and shall have a reasonable time, not to exceed thirty (30) days to correct, at WLAH's expense, any title defect not permitted by this Agreement. If such defect is not corrected within said period, Commission may terminate this Agreement by giving written notice thereof within ten (10) days after expiration of such thirty (30) day period. The Real Estate is also sold subject to any state of facts that would be disclosed by personal inspection and/or an accurate survey thereof.

3. Taxes and Assessments. WLAH shall pay the 2016 taxes due and payable in 2017 and the 2017 taxes due and payable in 2018, prorated to the date of closing, using the most recent tax bill if the applicable tax rate has not been set. Commission shall assume and pay all subsequent taxes, if any. WLAH shall pay any assessments for public improvements which, as of the date of closing, have been completed or are being constructed or installed on or about the Real Estate, or are serving it. If not yet assessed, WLAH shall pay an amount reasonably estimated by the applicable government agency to be equal to the anticipated assessment. WLAH warrants that WLAH has no knowledge of, and has not received any written notice regarding, any planned improvement for which an assessment reasonably might be made within one year of this date. Commission shall assume and pay all assessments becoming a lien after closing.

4. Insurance, Utility Bills. Insurance shall be canceled as of date of possession. WLAH shall pay all utility bills for services rendered on the Real Estate to date of possession.

5. Condition of Real Estate. The Real Estate is sold in "as is" condition as of the date of this Agreement and the condition thereof is in no way warranted by WLAH.

6. Closing. The transaction shall be closed on or before July 27, 2017, unless an extension of time is mutually agreed to in writing. At date of closing, WLAH shall execute and deliver in recordable form a general warranty deed conveying the Real Estate subject to all roadways, covenants, restrictions, easements and rights-of-way of record, all applicable zoning laws, and free and clear of all other liens and encumbrances except as stated in this Agreement, and shall also execute and deliver a standard WLAH's closing affidavit.

7. Possession. WLAH shall have full and complete possession of the Real Estate at the time of closing.

8. Default. If WLAH, through no fault of WLAH, is unable to convey marketable title as required by this Agreement and the defect or defects are not waived by Commission, WLAH's sole obligation shall be to continue to operate as garage manager under the Restated Parking Management Agreement dated December 17, 2007. If WLAH fails or refuses to perform as required by this Agreement, Commission may elect to (a) treat this Agreement as cancelled and terminated, in which case any payments shall be returned to Commission and Commission may recover such damages as may be proper; or (b) treat this Agreement as being in full force and effect, and Commission shall have the right to specific performance or damages, or both. If Commission fails or refuses to perform as required by this Agreement, WLAH may elect to (a) treat this Agreement as cancelled and terminated, or (b) treat this Agreement as being in full force and effect, and WLAH shall have the right to specific performance or damages, or both.

9. Costs and Attorney's Fees. If either party shall be compelled to employ an attorney to enforce the provisions of this Agreement after default, the non-defaulting party shall be entitled to recover from the defaulting party, as a part of such action or in a separate action brought for that purpose, in addition to any remedies available under this Agreement, all legal costs and expenses, including reasonable attorney's fees, incurred thereby.

10. Compliance. WLAH and Commission agree to provide all information necessary to complete and execute all documents and perform all actions necessary to comply with all government statutes and regulations. Upon Commission's request, WLAH shall provide and pay for a certification on non-foreign status under FIRPTA. If such certification is not so provided, Commission may withhold from WLAH's proceeds any tax due under FIRPTA.

11. Miscellaneous.

- a. This Agreement contains the entire agreement of the parties. All prior understandings and agreements, written or oral, are merged herein.
- b. No modification of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.
- c. Time for performance of the obligations of the parties is of the essence of this Agreement. Time periods specified in this Agreement are calendar days and shall

expire on midnight of the date stated unless otherwise stated herein or the parties agree in writing to a different date and/or time.

- d. Notice to either party shall be effective when received by such party unless otherwise provided herein.
- e. This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted.
- f. This Agreement shall be binding upon and shall inure to the sole benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns. None of the provisions are intended to be, nor shall they be construed to be, for the benefit of any third party.
- g. This Agreement shall be interpreted and enforced according to the laws of the State of Indiana.

**COMMISSION:**

Redevelopment Commission of West Lafayette

By: \_\_\_\_\_

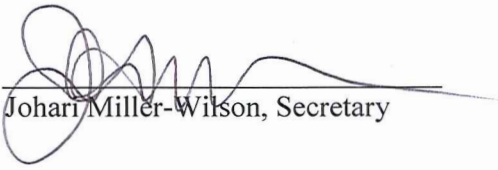
  
Lawrence T. Oates, President

**WLAH:**

Wabash Landing Apartment Homes, LLC

By: \_\_\_\_\_

Attest: \_\_\_\_\_

  
Johari Miller-Wilson, Secretary

## **EXHIBIT B**

### **PARKING LEASE**

THIS PARKING LEASE ("Lease") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between REDEVELOPMENT COMMISSION OF WEST LAFAYETTE ("Landlord"), and WABASH LANDING APARTMENT HOMES, LLC ("Tenant").

#### **WITNESSETH:**

1. **The Leased Premises.** Landlord hereby leases and demises to Tenant and Tenant agrees to lease from Landlord Two Hundred Six (206) parking spaces located in an existing parking garage (the "Parking Garage") located in West Lafayette, Tippecanoe County, Indiana, more particularly described on the attached Exhibit A incorporated herein by reference (the "Leased Premises"). Ninety Two (92) of the parking spaces included in the Leased Premises shall consist of parking spaces that are available in the Parking Garage and have been specifically identified by Landlord and designated by Tenant for a particular person and are available for use seven (7) days per week, twenty-four (24) hours per day ("Designated Spaces"). The Designated Spaces are shown on Exhibit B attached hereto and incorporated herein by reference. One Hundred Fourteen (114) of the parking spaces included in the Leased Premises shall consist of parking spaces that are available in the Parking Garage on a "first-come" bases seven (7) days per week, twenty-four (24) hours per day ("Nondesignated Spaces"). The Designated Spaces and Nondesignated Spaces are collectively referred to as the "Spaces". Upon the payment in full of the current TIF Bonds encumbering the Parking Garage, Landlord agrees that the Nondesignated Spaces shall be converted to Designated Spaces and the parties shall execute an amendment to this Lease identifying the location thereof.

2. **Term.**

(a) **Initial Term.** The term of this Lease shall commence on the Commencement Date for the Designated Spaces shall (as hereinafter defined) and shall continue for a period of forty (40) years ("Initial Term"). The Commencement Date for the Designated Spaces shall be \_\_\_\_\_, 20\_\_\_\_. The Commencement Date for the Nondesignated Spaces shall be not more than thirty (30) days after Tenant provides written notice to Landlord specifying the Commencement Date for the Nondesignated Spaces. The Initial Term together with any extensions of the Initial Term provided herein shall be referred to as the "Lease Term".

(b) **Extension Terms.** Tenant shall have the option to extend the Initial Term of this Lease for six (6) additional consecutive terms of ten (10) years each upon the same terms and conditions as the Initial Term (respectively, an "Extension Term" and collectively the "Extension Terms"). Tenant shall exercise its options to extend the term of this Lease by written notice to Landlord given at least sixty (60) days prior to the commencement date of the applicable Extension Term.



3. Minimum Rent. Tenant shall pay to Landlord as rent ("Rent") for the Spaces an amount equal to Forty-Five Dollars (\$45.00) per parking space per month, which amounts shall be payable in advance, on or before the first day of each calendar month; provided that, commencing on the date that is thirty-six (36) months after the first day of the first full calendar month immediately following the Commencement Date, and on each thirty-sixth (36<sup>th</sup>) monthly anniversary of such date, the monthly per parking space rent for Spaces shall be increased by the CPI Percentage Increase. For purposes of this Agreement: (a) "CPI Percentage Increase" shall mean, with respect to each 36 month period, the percentage increase in the CPI from the preceding 36 month period; and (b) "CPI" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. Cities Average, All Items (Base Year 1982-84=100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or, if no longer published, such similar replacement index issued by the Department of Labor.

Rent for any partial months after the commencement or end of the Lease Term shall be prorated on a daily basis, based on a thirty (30) day month.

4. Delinquency. In the event any installment of Rent or any other sum or charge required to be paid by Tenant under this Lease is not received by Landlord within ten (10) days after written notice of such delinquency from Landlord to Tenant, such unpaid amount shall bear interest from the due date thereof to the date of payment at the Prime Rate as established in the Money Rates Table contained in the Wall Street Journal on the due date thereof per annum.

5. Reduction in Leased Premises. Tenant shall, once per calendar year, be entitled to terminate this Lease as to all or any portion of the parking spaces in the Leased Premises upon (a) delivering to Landlord at least thirty (30) days prior written notice of Tenant's intent to terminate, which notice must designate the number and location of parking spaces to be removed from the Leased Premises, and (b) delivering to Landlord the pass cards (which allow access to the Parking Garage) for such terminated spaces. From and after the effective date of such termination, (a) Landlord may lease such terminated spaces to third parties, (b) the Rent shall be adjusted to reflect the new number of parking spaces contained in the Leased Premises, and (c) if no parking spaces remain in the Leased Premises, this Lease shall terminate and neither party shall have further rights or obligations hereunder (except rights, liabilities and obligations accruing prior to, or relating back to, the period of time prior to such termination of the Lease). Notwithstanding anything in this Paragraph 5 to the contrary and provided Tenant is not in default hereunder beyond any applicable notice and cure period, Tenant may, from time to time, after terminating this Lease as to a portion of the parking spaces in the Leased Premises, notify Landlord, in writing, that it desires to reinstate the previously terminated parking spaces. Upon such notice to reinstate, the previously designated parking spaces, if available and not being leased to third parties, shall again be subject to the terms and conditions of this Lease. If such previously terminated parking spaces are not available, Landlord shall provide, if available, other parking spaces in the Parking Garage. If no parking spaces or less than all of the parking spaces requested to be reinstated are not available, only those parking spaces which are or later become available shall become subject to the terms and conditions of this Lease. After receipt of notice to reinstate and the failure of Landlord to reinstate the requested number of parking spaces due to lack of availability, Landlord shall immediately notify Tenant when additional parking spaces become available, which additional parking spaces shall become subject to the terms of this Lease. Notwithstanding anything in this

Lease to the contrary, the minimum number of parking spaces which may be the subject of this Lease is ninety-two (92) parking spaces, and the maximum number of parking spaces which may be the subject of this Lease is two hundred six (206) parking spaces.

6. Use of Leased Premises. The Leased Premises shall be used by Tenant solely for the purpose of monthly parking of motor vehicles, subject to the conditions and limitations contained herein, and for no other use or purpose whatsoever.

Tenant covenants and agrees to the following:

(a) Tenant shall comply with all laws, ordinances, rules, regulations, orders and decrees of any governmental entity now or hereafter affecting or relating to Tenant's use of the Leased Premises.

(b) Tenant shall not use nor permit the use of the Leased Premises in whole or in part for the parking of mobile homes, RV's, trucks or other motor vehicles which exceed the height limitation of the Parking Garage structure or otherwise require more space than a standard-size automobile.

(c) Tenant shall not use nor permit the use of the Leased Premises for the parking of vehicles in other than available, marked parking spaces.

(d) Tenant shall comply and shall use reasonable efforts to cause its sublessees, licensees, and invitees to comply with all reasonable rules and regulations established from time to time by Landlord for the use of the Parking Garage.

7. Maintenance and Repairs. During the term of this Lease, Landlord shall maintain and repair the Parking Garage, including without limitation all sidewalks, parking lot pavement, parking areas, grounds and landscaped areas, curbing, storm water drainage facilities, lighting facilities and other utility facilities, in good operating condition and repair, and Landlord may temporarily restrict parking in certain areas of the Parking Garage from time to time to accomplish the same. Landlord agrees to use reasonable efforts to minimize any inconvenience to Tenant and Tenant's invitees and sublessees as a result of any maintenance or repair activity of the Parking Garage.

8. Assignment and Sublease. Tenant may assign this Lease without Landlord's prior written consent to (a) any purchaser of the Wabash Landing Apartment Homes, and (b) any lender providing financing to Tenant. Otherwise, Tenant may assign this Lease only upon the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant also shall be entitled to sublease individual parking spaces in the Leased Premises to monthly users without Landlord's consent, but Landlord and Tenant acknowledge and agree that no subletting, even if all parking spaces within the Leased Premises are sublet, shall release or relieve Tenant from full and primary liability as Tenant under this Lease. All subleases shall be subject and subordinate to this Lease and no sublease shall be valid or enforceable after the expiration or earlier termination of this Lease. The acceptance by Landlord of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease.

9. Default and Remedy.

(a) Event of Default. The occurrence of any of the following shall be deemed an "Event of Default":

(1) Failure by Tenant to perform any act required to be performed by Tenant hereunder or to comply with any other condition or covenant contained herein and such failure shall continue for thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, if the nature of Tenant's default is such that more than thirty (30) days are reasonably necessary for its cure, Tenant shall not be declared in default if Tenant commences to cure such default within said thirty (30) day period and thereafter diligently pursues such cure to completion.

(2) The final non-appealable adjudication of Tenant as a bankrupt; the making by Tenant of a general assignment for the benefit of creditors; the appointment of a permanent receiver or trustee in bankruptcy for Tenant or its assets not dissolved or vacated within ninety (90) days or such longer period as is reasonably necessary provided Tenant is pursuing such with due diligence; the appointment of a temporary receiver for Tenant or its assets not dissolved or vacated within ninety (90) days or such longer period as is reasonably necessary provided Tenant is pursuing such with due diligence; the initiation of an arrangement or similar proceeding for the benefit of creditors by Tenant.

(b) Landlord's Remedies. Upon the occurrence and during the continuance of any Event of Default (as defined above), Landlord may, upon not less than six (6) month's prior written notice to Tenant, elect to terminate this Lease.

In no event shall Tenant be liable for rent payments which first become due and payable after the termination of this Lease for any reason. The remedies listed in this Paragraph 9(b) shall be Landlord's exclusive remedy upon the occurrence of any Event of Default as defined above.

(c) Right to Cure. Notwithstanding anything in this Lease to the contrary, in the event there is an Event of Default hereunder, the Landlord shall provide Tenant's lender, if any, with written notice of such Event of Default and allow Tenant's lender, if any, with a reasonable opportunity to cure such Event of Default on Tenant's behalf prior to terminating this Lease.

(d) Attorney's Fees. In the event either party defaults in the performance or observance of any of the terms, conditions, covenants or obligations contained in this Lease and the non-defaulting party employs attorneys to enforce all or any part of this Lease or to recover damages, including collecting any rent due or to recover possession of the Leased Premises, the defaulting party agrees to reimburse the non-defaulting party for the reasonable attorney's fees incurred thereby whether or not suit is actually filed.

(e) Waiver. No waiver of any covenants or condition or the breach of any covenant or condition of this Lease shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor justify or authorize a nonobservance on any other occasion of such covenant or condition or any other covenant or condition; nor shall the acceptance of rent by

Landlord at any time when Tenant is in default of any covenant or condition hereof be construed as a waiver of such default or Landlord's right to terminate this Lease on account of such default.

(f) Landlord's Default and Tenant's Remedies. Landlord shall be in default if it shall fail to perform or observe any term, condition, covenant or obligation as required under this Lease for a period of thirty (30) days after written notice thereof from Tenant to Landlord provided however, if the nature of Landlord's default is such that more than thirty (30) days are reasonably necessary for its cure, Landlord shall not be declared in default if Landlord or its lender commences such performance within said 30-day period and thereafter diligently prosecutes such cure to completion.

10. Access and Inspection. Landlord and Landlord's agents, employees, contractors, tenants, licensees and invitees shall be permitted concurrent access to the Parking Garage and shall be entitled to use, inspect, examine, repair and otherwise have access to the Leased Premises at all times.

11. Fire and Extended Coverage Insurance. During the term of this Lease, Landlord shall maintain, at its sole cost and expense, fire and extended coverage insurance on the Parking Garage

12. Fire and Other Casualty. In the event of total or partial destruction of the Parking Garage by fire or other casualty, Landlord shall, as quickly as reasonably possible, restore and repair the Parking Garage or reconstruct a parking garage which contains not less than three hundred ten (310) spaces. Rent shall proportionately abate during the time that the Leased Premises or part thereof are unusable by reason of any such damage thereto.

13. Public Liability and Property Damage Insurance. During the term of this Lease, Landlord shall maintain, at its sole cost and expense, general public liability insurance against claims for bodily injury, personal injury and property damage occurring upon, in or on the Parking Garage, with minimum combined single limits of \$3,000,000 each occurrence. Landlord shall cause Tenant to be named as an additional insured under such policy or policies of general public liability insurance, so long as this Lease is in effect. Tenant may, from time to time, request Landlord to provide, and Landlord shall provide to Tenant evidence of such insurance, including a certificate evidencing the same.

14. Eminent Domain. If all or any part of the Parking Garage shall be acquired by the exercise of eminent domain by any public or quasi-public body, Landlord shall restore or repair the Leased Premises for the purpose contained in Paragraph 6 herein. Rent shall be equitably abated in proportion to the number of parking spaces in the Leased Premises taken.

15. Surrender. Upon the expiration or earlier termination of this Lease, Tenant shall quit and surrender to Landlord the Leased Premises, together with all pass cards and all property affixed to the Leased Premises, in as good order and condition as of the Commencement Date, ordinary wear and tear and acts of God and casualty excepted. Any damage caused to the Leased Premises or Parking Garage by removal of any property shall be promptly repaired by Tenant. Upon expiration or early termination of this Lease, Tenant shall remove all property of Tenant and

its subtenants and licensees as directed by Landlord; and failing to do so, Landlord may cause all of said property to be removed at the expense of Tenant, and Tenant hereby agrees to pay all the costs and expenses thereby reasonably incurred. Any property left on the Leased Premises after the expiration or earlier termination of the Lease shall, after written notice and the failure to remove same within ten (10) days thereafter, at Landlord's option, be deemed abandoned and Landlord shall be entitled to retain, remove or dispose of such property without liability or responsibility to Tenant or any other person or entity. Tenant's obligation to observe or perform the covenants set forth herein shall survive the expiration or earlier termination of this Lease.

16. Notices. Any notice required or permitted to be given or served by either party to this Lease shall be deemed to have been given or served by either party to this Lease when made in writing and hand delivered or mailed by certified or registered mail, addressed as follows:

Landlord: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All rental payments shall be made to Landlord at the address set forth above. The addresses may be changed from time to time by either party by serving notice as above provided.

17. Benefit. This Lease and all of the terms and provisions hereof shall inure to the benefit of and be binding upon Landlord and Tenant and their respective heirs, successors, assigns and legal representatives.

18. Governing Law. This Lease shall be governed in accordance with the laws of the State of Indiana.

19. Estoppel Certificate. Landlord shall, within ten (10) days following receipt of a request from Tenant, execute, acknowledge and deliver to Tenant, or to any lender, holder of any mortgage, purchaser or prospective lender or purchaser designated by Tenant, a written statement

in such a form as Tenant may reasonably request certifying (1) that this Lease is in full force and effect and unmodified (or if modified, stating the nature of the modification); (ii) the dates to which the Minimum Rent and other charges have been paid; (iii) that there are not, to Landlord's knowledge, any uncured defaults (or specifying such known defaults if any are claimed); and (iv) such other information as Tenant may reasonably request. Any such statement may be relied upon by any prospective purchaser or mortgagee.

20. Representations and Warranties. Tenant represents and warrants to Landlord that (i) Tenant is duly organized, validly existing and in good standing under the laws of the State of Indiana; (ii) all action necessary to authorize the execution of this Lease has been taken; and (iii) the officers executing and delivering this Lease on behalf of Tenant have been authorized to do so, and such execution and delivery shall bind Tenant. Tenant, at Landlord's request, shall provide Landlord with evidence of such authority.

21. Memorandum of Lease. This Lease shall not be recorded. The parties agree, upon request of either party, to promptly execute and record a Memorandum of this Lease. If a Memorandum of Lease is recorded, Tenant shall execute, deliver and record, at Tenant's expense, a release or termination of such memorandum upon the expiration or earlier termination of this Lease. Upon Tenant's failure to do so, Landlord shall be entitled to execute and record such release or termination for and on behalf of Tenant, and Tenant hereby irrevocably appoints Landlord its attorney to do so. Tenant's obligations under this Paragraph 21 shall survive the expiration or termination of this Lease.

22. Grant of First Refusal. Landlord and the Redevelopment Authority of West Lafayette ("RDA"), each to the full extent of their right, title and interest in and to the Parking Garage, hereby grant to Tenant the right (the "Right of First Refusal") to match any offer to purchase or agreement to sell all or any portion of the Parking Garage, upon the following terms and conditions. Landlord, RDA and Tenant hereby agree that: (a) if Landlord or RDA receives an offer to purchase the Parking Garage or any portion thereof from a third party which Landlord and RDA intend to accept or intend to enter into an agreement to sell the Parking Garage or any portion thereof (an "Offer"), Landlord and RDA shall deliver to Tenant a copy of the Offer; (b) Tenant shall have the right to purchase the Parking Garage or any portion thereof upon substantially the same terms and conditions set forth in the Offer by giving Landlord and RDA written notice of Tenant's election to exercise the Right of First Refusal (the "Exercise Notice") within thirty (30) days after receipt of the Offer by Tenant from Landlord and RDA; (c) if Tenant fails to exercise the Right of First Refusal, Landlord and RDA shall have the right to proceed with and consummate the sale of the Parking Garage or any portion thereof to the third party that made or was a party to the Offer upon the terms and conditions set forth in the Offer and if such sale is consummated, Tenant's Right of First Refusal shall be terminated as to the portion of the Parking Garage so sold (unless such sale was other than the conveyance of fee simple title, in which event, Tenant's Right of First Refusal shall not be terminated); (d) if Tenant fails to exercise the Right of First Refusal and Landlord and RDA do not consummate the sale of the Parking Garage to the third party that made or was a party to the Offer, Tenant's Right of First Refusal shall not be terminated and shall apply to, and have full force and effect in connection with, all subsequent sales of the Parking Garage; (e) if Tenant exercises the Right of First Refusal, Landlord, RDA and Tenant will promptly (and in any event, within thirty (30) days after Landlord's and RDA's receipt

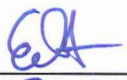
of the Exercise Notice) enter into a purchase agreement providing for the purchase and sale of the Parking Garage upon substantially the same terms and conditions as set forth in the Offer; and (f) any sale(s) of the Parking Garage in violation of the terms of this Section 22 shall be null and void. For purposes of Tenant's Right of First Refusal, the words "purchase" and "sale" shall include a purchase, sale and any other transaction whereby the Parking Garage or any portion thereof or an interest therein will be transferred or conveyed, including, without limitation, a lease in excess of one (1) year. In the event that Landlord and RDA intend to accept an Offer which involves consideration other than the payment of cash, Tenant shall be deemed to have matched such Offer if it agrees to pay Landlord and RDA the fair market value (as determined by an appraiser acceptable to both parties) of the consideration to be received by Landlord and RDA. At any time after: (i) the TIF Bonds encumbering the Parking Garage are repaid; and (ii) the IRS Regulations no longer impose restrictions on the use of the Parking Garage; then Tenant may require, subject to the provisions of this Section 22, Landlord and RDA to conduct a public offering of the Parking Garage; provided that any such public offering shall be subject to the terms and conditions of this Agreement and Tenant's Right of First Refusal.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF the parties have executed this Lease as of the day and year first above written.

LANDLORD:

REDEVELOPMENT COMMISSION OF WEST  
LAFAYETTE

By:   
Printed: ~~Laurence T. Oates~~ Laurence T. Oates  
Title: President

TENANT:

WABASH LANDING APARTMENT HOMES,  
LLC

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_

RDA:

The Redevelopment Authority of West Lafayette  
executes this Parking Lease solely for the purpose of  
being bound and subject to the terms and conditions  
of Section 22.

REDEVELOPMENT AUTHORITY OF WEST  
LAFAYETTE

By: \_\_\_\_\_  
Printed: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**

**EXHIBIT B**

**Designated Parking Spaces**

## EXHIBIT C

### PARKING LEASE

THIS PARKING LEASE ("Lease") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2017, by and between REDEVELOPMENT COMMISSION OF WEST LAFAYETTE ("Landlord"), and WABASH LANDING HOTEL ASSOCIATES, LLC ("Tenant").

WITNESSETH:

23. The Leased Premises. Landlord hereby leases and demises to Tenant and Tenant agrees to lease from Landlord One Hundred Four (104) parking spaces located in an existing parking garage (the "Parking Garage") located in West Lafayette, Tippecanoe County, Indiana, more particularly described on the attached Exhibit A incorporated herein by reference (the "Leased Premises"). The One Hundred Four (104) parking spaces comprising the Leased Premises shall consist of parking spaces that are available in the Public Component of the Parking Garage on a "first-come" basis seven (7) days per week, twenty-four (24) hours per day ("Spaces"). The Space shall not include any spaces in the Parking Garage that are or have been designated for a specific user or person.

24. Term.

(a) Initial Term. The term of this Lease shall commence on the Commencement Date (as hereinafter defined) and shall continue for a period of forty (40) years ("Initial Term"). The Commencement Date shall be \_\_\_\_\_, 2017. The Initial Term together with any extensions of the Initial Term provided herein shall be referred to as the "Lease Term".

(b) Extension Terms. Tenant shall have the option to extend the Initial Term of this Lease for six (6) additional consecutive terms of ten (10) years each upon the same terms and conditions as the Initial Term (respectively, an "Extension Term" and collectively the "Extension Terms"). Tenant shall exercise its options to extend the term of this Lease by written notice to Landlord given at least sixty(60) days prior to the commencement date of the applicable Extension Term.

25. Minimum Rent. Tenant shall pay to Landlord as rent ("Rent") for the Spaces an amount equal to Forty-five Dollars (\$45.00) per parking space per month, which amounts shall be payable in advance, on or before the first day of each calendar month; provided that, commencing on the date that is thirty-six (36) months after the first day of the first full calendar month immediately following the Commencement Date, and on each thirty-sixth (36<sup>th</sup>) monthly anniversary of such date, the monthly per parking space rent for Spaces shall be increased by the CPI Percentage Increase. For purposes of this Agreement: (a) "CPI Percentage Increase" shall mean, with respect to each 36 month period, the percentage increase in the CPI from the preceding

36 month period; and (b) "CPI" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers, U.S. Cities Average, All Items (Base Year 1982-84=100), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or, if no longer published, such similar replacement index issued by the Department of Labor.

Rent for any partial months after the commencement or end of the Lease Term shall be prorated on a daily basis, based on a thirty (30) day month.

26. Delinquency. In the event any installment of Rent or any other sum or charge required to be paid by Tenant under this Lease is not received by Landlord within ten (10) days after written notice of such delinquency from Landlord to Tenant, such unpaid amount shall bear interest from the due date thereof to the date of payment at the Prime Rate as established in the Money Rates Table contained in the Wall Street Journal on the due date thereof per annum.

27. Reduction in Leased Premises. Tenant shall, once per calendar year, be entitled to terminate this Lease as to all or any portion of the parking spaces in the Leased Premises upon (a) delivering to Landlord at least thirty (30) days prior written notice of Tenant's intent to terminate, which notice must designate the number and location of parking spaces to be removed from the Leased Premises, and (b) delivering to Landlord any pass cards and other means of access which allow access to the Parking Garage for such terminated spaces. From and after the effective date of such termination, (a) Landlord may lease such terminated spaces to third parties, (b) the Rent shall be adjusted to reflect the new number of parking spaces contained in the Leased Premises, and (c) if no parking spaces remain in the Leased Premises, this Lease shall terminate and neither party shall have further rights or obligations hereunder (except rights, liabilities and obligations accruing prior to, or relating back to, the period of time prior to such termination of the Lease). Notwithstanding anything in this Paragraph 5 to the contrary and provided Tenant is not in default hereunder beyond any applicable notice and cure period, Tenant may, from time to time, after terminating this Lease as to a portion of the parking spaces in the Leased Premises, notify Landlord, in writing, that it desires to reinstate the previously terminated parking spaces. Upon such notice to reinstate, the previously designated parking spaces, if available and not being leased to third parties, shall again be subject to the terms and conditions of this Lease. If such previously terminated parking spaces are not available, Landlord shall provide, if available, other parking spaces in the Parking Garage. If no parking spaces or less than all of the parking spaces requested to be reinstated are not available, only those parking spaces which are or later become available shall become subject to the terms and conditions of this Lease. After receipt of notice to reinstate and the failure of Landlord to reinstate the requested number of parking spaces due to lack of availability, Landlord shall immediately notify Tenant when additional parking spaces become available, which additional parking spaces shall become subject to the terms of this Lease. Notwithstanding anything in this Lease to the contrary, the minimum number of parking spaces which may be the subject of this Lease is seventy (70) parking spaces, and the maximum number of parking spaces which may be the subject of this Lease is one hundred four (104) parking spaces.

28. Use of Leased Premises. The Leased Premises shall be used by Tenant solely for the purpose of parking motor vehicles, subject to the conditions and limitations contained herein, and for no other use or purpose whatsoever.

Tenant covenants and agrees to the following:

(a) Tenant shall comply with all laws, ordinances, rules, regulations, orders and decrees of any governmental entity now or hereafter affecting or relating to Tenant's use of the Leased Premises.

(b) Tenant shall not use nor permit the use of the Leased Premises in whole or in part for the parking of mobile homes, RV's, trucks or other motor vehicles which exceed the height limitation of the Parking Garage structure or otherwise require more space than a standard-size automobile.

(c) Tenant shall not use nor permit the use of the Leased Premises for the parking of vehicles in other than available, marked parking spaces.

(d) Tenant shall comply and shall use reasonable efforts to cause its sublessees, licensees, and invitees to comply with all reasonable rules and regulations established from time to time by Landlord for the use of the Parking Garage.

29. Maintenance and Repairs. During the term of this Lease, Landlord shall maintain and repair the Parking Garage, including without limitation all sidewalks, parking lot pavement, parking areas, grounds and landscaped areas, curbing, storm water drainage facilities, lighting facilities and other utility facilities, in good operating condition and repair, and Landlord may temporarily restrict parking in certain areas of the Parking Garage from time to time to accomplish the same. Landlord agrees to use reasonable efforts to minimize any inconvenience to Tenant and Tenant's invitees and sublessees as a result of any maintenance or repair activity of the Parking Garage.

30. Assignment and Sublease. Tenant may assign this Lease without Landlord's prior written consent to (a) any purchaser of the Wabash Landing Hotel (currently, a Hilton Hotel), and (b) any lender providing financing to Tenant. Otherwise, Tenant may assign this Lease only upon the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant also shall be entitled to allow guests of the Wabash Landing Hotel to use the Spaces without Landlord's consent, but Landlord and Tenant acknowledge and agree that such use by guests of the Wabash Landing Hotel shall not release or relieve Tenant from full and primary liability as Tenant under this Lease. The acceptance by Landlord of rent from any other person shall not be deemed to be a waiver of any of the provisions of this Lease.

31. Default and Remedy.

(a) Event of Default. The occurrence of any of the following shall be deemed an "Event of Default":

(1) Failure by Tenant to perform any act required to be performed by Tenant hereunder or to comply with any other condition or covenant contained herein and such failure shall continue for thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, if the nature of Tenant's default is such that more than thirty (30) days are reasonably necessary for its cure, Tenant shall not be declared in default if Tenant commences to cure such default within said thirty (30) day period and thereafter diligently pursues such cure to completion.

(2) The final non-appealable adjudication of Tenant as a bankrupt; the making by Tenant of a general assignment for the benefit of creditors; the appointment of a permanent receiver or trustee in bankruptcy for Tenant or its assets not dissolved or vacated within ninety (90) days or such longer period as is reasonably necessary provided Tenant is pursuing such with due diligence; the appointment of a temporary receiver for Tenant or its assets not dissolved or vacated within ninety (90) days or such longer period as is reasonably necessary provided Tenant is pursuing such with due diligence; the initiation of an arrangement or similar proceeding for the benefit of creditors by Tenant.

(b) Landlord's Remedies. Upon the occurrence and during the continuance of any Event of Default (as defined above), Landlord may, upon not less than six (6) month's prior written notice to Tenant, elect to terminate this Lease.

In no event shall Tenant be liable for rent payments which first become due and payable after the termination of this Lease for any reason. The remedies listed in this Paragraph 9(b) shall be Landlord's exclusive remedy upon the occurrence of any Event of Default as defined above.

(c) Right to Cure. Notwithstanding anything in this Lease to the contrary, in the event there is an Event of Default hereunder, the Landlord shall provide Tenant's lender, if any, with written notice of such Event of Default and allow Tenant's lender, if any, with a reasonable opportunity to cure such Event of Default on Tenant's behalf prior to terminating this Lease.

(d) Attorney's Fees. In the event either party defaults in the performance or observance of any of the terms, conditions, covenants or obligations contained in this Lease and the non-defaulting party employs attorneys to enforce all or any part of this Lease or to recover damages, including collecting any rent due or to recover possession of the Leased Premises, the defaulting party agrees to reimburse the non-defaulting party for the reasonable attorney's fees incurred thereby whether or not suit is actually filed.

(e) Waiver. No waiver of any covenants or condition or the breach of any covenant or condition of this Lease shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor justify or authorize a nonobservance on any other occasion of such

covenant or condition or any other covenant or condition; nor shall the acceptance of rent by Landlord at any time when Tenant is in default of any covenant or condition hereof be construed as a waiver of such default or Landlord's right to terminate this Lease on account of such default.

(f) Landlord's Default and Tenant's Remedies. Landlord shall be in default if it shall fail to perform or observe any term, condition, covenant or obligation as required under this Lease for a period of thirty (30) days after written notice thereof from Tenant to Landlord provided however, if the nature of Landlord's default is such that more than thirty (30) days are reasonably necessary for its cure, Landlord shall not be declared in default if Landlord or its lender commences such performance within said 30-day period and thereafter diligently prosecutes such cure to completion.

32. Access and Inspection. Landlord and Landlord's agents, employees, contractors, tenants, licensees and invitees shall be permitted concurrent access to the Parking Garage and shall be entitled to use, inspect, examine, repair and otherwise have access to the Leased Premises at all times.

33. Fire and Extended Coverage Insurance. During the term of this Lease, Landlord shall maintain, at its sole cost and expense, fire and extended coverage insurance on the Parking Garage

34. Fire and Other Casualty. In the event of total or partial destruction of the Parking Garage by fire or other casualty, Landlord shall, as quickly as reasonably possible, restore and repair the Parking Garage or reconstruct a parking garage which contains not less than three hundred ten (310) parking spaces. Rent shall proportionately abate during the time that the Leased Premises or part thereof are unusable by reason of any such damage thereto.

35. Public Liability and Property Damage Insurance. During the term of this Lease, Landlord shall maintain, at its sole cost and expense, general public liability insurance against claims for bodily injury, personal injury and property damage occurring upon, in or on the Parking Garage, with minimum combined single limits of \$3,000,000 each occurrence. Landlord shall cause Tenant to be named as an additional insured under such policy or policies of general public liability insurance, so long as this Lease is in effect. Tenant may, from time to time, request Landlord to provide, and Landlord shall provide to Tenant evidence of such insurance, including a certificate evidencing the same.

36. Eminent Domain. If all or any part of the Parking Garage shall be acquired by the exercise of eminent domain by any public or quasi-public body, Landlord shall restore or repair the Leased Premises for the purpose contained in Paragraph 6 herein. Rent shall be equitably abated in proportion to the number of parking spaces in the Leased Premises taken.

37. Surrender. Upon the expiration or earlier termination of this Lease, Tenant shall quit and surrender to Landlord the Leased Premises, together with all pass cards and all property affixed to the Leased Premises, in as good order and condition as of the Commencement Date,

ordinary wear and tear and acts of God and casualty excepted. Any damage caused to the Leased Premises or Parking Garage by removal of any property shall be promptly repaired by Tenant. Upon expiration or early termination of this Lease, Tenant shall remove all property of Tenant and its subtenants and licensees as directed by Landlord; and failing to do so, Landlord may cause all of said property to be removed at the expense of Tenant, and Tenant hereby agrees to pay all the costs and expenses thereby reasonably incurred. Any property left on the Leased Premises after the expiration or earlier termination of the Lease shall, after written notice and the failure to remove same within ten (10) days thereafter, at Landlord's option, be deemed abandoned and Landlord shall be entitled to retain, remove or dispose of such property without liability or responsibility to Tenant or any other person or entity. Tenant's obligation to observe or perform the covenants set forth herein shall survive the expiration or earlier termination of this Lease.

38. Notices. Any notice required or permitted to be given or served by either party to this Lease shall be deemed to have been given or served by either party to this Lease when made in writing and hand delivered or mailed by certified or registered mail, addressed as follows:

Landlord: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tenant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

All rental payments shall be made to Landlord at the address set forth above. The addresses may be changed from time to time by either party by serving notice as above provided.

39. Benefit. This Lease and all of the terms and provisions hereof shall inure to the benefit of and be binding upon Landlord and Tenant and their respective heirs, successors, assigns and legal representatives.

40. Governing Law. This Lease shall be governed in accordance with the laws of the State of Indiana.

41. Estoppel Certificate. Landlord shall, within ten (10) days following receipt of a request from Tenant, execute, acknowledge and deliver to Tenant, or to any lender, holder of any mortgage, purchaser or prospective lender or purchaser designated by Tenant, a written statement in such a form as Tenant may reasonably request certifying (1) that this Lease is in full force and effect and unmodified (or if modified, stating the nature of the modification); (ii) the dates to which the Minimum Rent and other charges have been paid; (iii) that there are not, to Landlord's knowledge, any uncured defaults (or specifying such known defaults if any are claimed); and (iv) such other information as Tenant may reasonably request. Any such statement may be relied upon by any prospective purchaser or mortgagee.

42. Representations and Warranties. Tenant represents and warrants to Landlord that (i) Tenant is duly organized, validly existing and in good standing under the laws of the State of Indiana; (ii) all action necessary to authorize the execution of this Lease has been taken; and (iii) the officers executing and delivering this Lease on behalf of Tenant have been authorized to do so, and such execution and delivery shall bind Tenant. Tenant, at Landlord's request, shall provide Landlord with evidence of such authority.

43. Memorandum of Lease. This Lease shall not be recorded. The parties agree, upon request of either party, to promptly execute and record a Memorandum of this Lease. If a Memorandum of Lease is recorded, Tenant shall execute, deliver and record, at Tenant's expense, a release or termination of such memorandum upon the expiration or earlier termination of this Lease. Upon Tenant's failure to do so, Landlord shall be entitled to execute and record such release or termination for and on behalf of Tenant, and Tenant hereby irrevocably appoints Landlord its attorney to do so. Tenant's obligations under this Paragraph 26 shall survive the expiration or termination of this Lease.



IN WITNESS WHEREOF the parties have executed this Lease as of the day and year first above written.

LANDLORD:

REDEVELOPMENT COMMISSION OF WEST  
LAFAYETTE

By: 

Printed: Lawrence T. Oates

Title: President

TENANT:

WABASH LANDING HOTEL ASSOCIATES,  
LLC

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

